

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL

DEC 1 9 55 AM '04

Before the
Federal Communications Commission
Washington, D.C. 20554

DISSENT

In the Matter of)

Federal-State Joint Board)

On Universal Service)

CC Docket No. 96-45

ORDER ON RECONSIDERATION

Adopted: October 1, 2004

Released: November 29, 2004

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements;
Commissioner Martin approving in part, concurring in part, dissenting in part and issuing a statement.

TABLE OF CONTENTS

	Paragraph
I. INTRODUCTION.....	1
II. BACKGROUND	2
III. DISCUSSION	6
A. Eligible Telecommunications Carrier	7
B. Rural, Insular, and High Cost Support	11
1. Indexed Cap on High-Cost Loop Fund	11
2. Sale of Exchanges	15
3. Sufficiency of Support	18
C. Schools, Libraries, and Rural Health Care Providers	23
1. Wide Area Networks	23
2. Accounting and Reporting Requirements	26
3. Support for Advanced Services	31
D. Administration of Support Mechanisms	34
1. Contribution Methodology	34
2. Payphone Service Providers	36
3. Broadcasters	40
4. Multipoint Distribution Service	44
5. <i>De Minimis</i> Exemption	47
IV. ORDERING CLAUSES	53
APPENDIX A: List of Parties – First Report and Order	
APPENDIX B: List of Parties – Fourth Order on Reconsideration	

I. INTRODUCTION

1. In this Order on Reconsideration, we address various petitions for reconsideration filed in response to the rules adopted in the First Report and Order in CC Docket No. 96-45¹ and the Fourth Order on Reconsideration in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72.² We grant, in part, a petition filed by American Public Communications Council (APCC). Based on the record before us, we deny petitions filed by APCC, AT&T, Cellular Telecommunications and Internet Association (CTIA), Lan Neugent and Greg Weisiger (LN/GW), Mobile Satellite Ventures (MSV), National Public Radio (NPR), Puerto Rico Telephone Company (PRTC), Rural Telephone Coalition (RTC), Southern Educational Communications Association (SECA), United States Telecommunications Association (USTA), Wireless Cable Association (WCA), and Wyoming Public Service Commission (Wyoming Commission); these petitions either raise no facts which have not previously been presented to the Federal Communications Commission (Commission) or are moot. We make minor clarifications to our rules based on the issues raised in these petitions as needed.

II. BACKGROUND

2. In section 254 of the Communications Act of 1934, as amended (the Act),³ Congress directed the Commission and the states to establish support mechanisms to ensure the delivery of affordable telecommunications and information services to all Americans, including low-income consumers, eligible schools and libraries, rural health care providers, and those individuals in rural, insular, and high cost areas. Pursuant to this directive, in 1997, the Commission released the *First Report and Order*, which established universal service rules consistent with the Act.⁴ Shortly thereafter, the Commission, on its own motion, released an order clarifying, among other things, issues relating to the schools and libraries program, high cost support mechanisms, and coordination between the Commission staff and state staff of the Federal-State Joint Board on Universal Service (Joint Board).⁵ The Commission received sixty-one petitions for reconsideration and/or clarification of these orders.

3. In the *Fourth Reconsideration Order* in 1997, the Commission addressed many of the issues raised in the petitions for reconsideration of the *First Report and Order* and the *First Order on Reconsideration*, including: (1) rules governing eligibility of carriers and other providers of supported

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*First Report and Order*) (subsequent history omitted). See also Appendix A.

² *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997) (*Fourth Reconsideration Order*). See also Appendix B.

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.*

⁴ The 1996 Act provides that the Commission and the Federal-State Joint Board shall base policies for the preservation and advancement of universal service on several principles, including: (1) that all of the universal service objectives established by the Act, including those for low-income individuals, for consumers in rural, insular, and high cost areas, and for schools, libraries, and rural health care providers, be implemented; (2) that rates for basic residential service be maintained at affordable levels; (3) that universal service funding mechanisms be explicit; and (4) that the benefits of competition be brought to as many consumers as possible.

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095 (1997) (*First Order on Reconsideration*).

services; (2) methods for determining levels of universal service support for carriers in rural, insular, and high cost areas; (3) support for low-income consumers; (4) rules governing the receipt of support under the schools and libraries and rural health care programs; (5) rules governing who must contribute to the universal service fund; and (6) the administration of universal service support mechanisms.⁶ The Commission indicated that it would address the remaining issues in one or more subsequent order in this docket.⁷

4. Many of the remaining issues raised in the petitions for reconsideration have either been already ruled upon by the Commission or are the subject of further rulemaking proceedings. Because intervening developments may have rendered the record developed by some of these petitions stale, the Common Carrier Bureau (Bureau)⁸ issued a public notice inviting interested parties to refresh the record pertaining to petitions for reconsideration of the *First Report and Order*.⁹ Specifically, the Bureau requested parties filing petitions for reconsideration of the *First Report and Order* to submit a supplemental notice indicating which issues they still wish to be reconsidered. If parties did not indicate their intent to pursue their petitions for reconsideration, the Commission deemed such petitions withdrawn and their petitions were dismissed.¹⁰

5. Several parties submitted comments updating their previously filed petitions for reconsideration of the *First Report and Order*.¹¹ Other petitioners have voluntarily withdrawn their petitions for reconsideration of the *Fourth Reconsideration Order*.¹² In addition, the Commission denied petitions for reconsideration of the *Fourth Reconsideration Order* filed by the North Dakota Public Service Commission, South Dakota Public Utilities Commission, and Washington Utilities and Transportation Commission in a separate order.¹³

⁶ Eighteen parties filed petitions for reconsideration of the *Fourth Reconsideration Order*.

⁷ *Fourth Reconsideration Order*, 13 FCC Rcd at 5323, para. 6.

⁸ The Common Carrier Bureau was subsequently renamed the Wireline Competition Bureau.

⁹ *Parties Asked to Refresh the Record Regarding Reconsideration of Rules Adopted in the 1997 Universal Service First Report and Order*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 13850 (2001) (*Refresh the Record Public Notice*).

¹⁰ See *Refresh the Record Public Notice*; see also *Federal-State Joint Board on Universal Service; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-45, 96-98, Order on Reconsideration, 17 FCC Rcd 1988 (2002).

¹¹ These parties include: APCC, AT&T, MSV, PRTC, RTC, USTA, and the Wyoming Commission.

¹² Parties withdrawing their petitions for reconsideration of the *Fourth Reconsideration Order* include: Michael Lynch/Microwave Bypass, National Exchange Carrier Association, National Railroad Passenger Corp., Oklahoma State Regents for Higher Education and Oklahoma Office of State Finance, Personal Communications Industry Association, United States Telephone Association, US West, Washington Department of Information Services, and the Washington State School Director's Association. See *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Request to Withdraw Petitions for Reconsideration*, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 21424 (2001).

¹³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, 18 FCC Rcd 15090 (2003).

III. DISCUSSION

6. In this Order on Reconsideration, the Commission addresses petitions for reconsideration of the Commission's *First Report and Order* and *Fourth Reconsideration Order* to the extent described below.

A. Eligible Telecommunications Carrier

1. Background

7. Section 214(e)(1) of the Act requires that, in order to be eligible for universal service support, a common carrier must offer the services supported by federal universal service mechanisms either using its "own facilities or a combination of its own facilities and resale of another carrier's services"¹⁴ and advertise throughout its service area, the availability of, and charges for, services that are supported by federal universal service support mechanisms using media of general distribution.¹⁵ In the *First Report and Order*, interpreting the first part of the requirement, the Commission determined that carriers offering supported services solely through resale are not eligible for universal service support because they do not provide telecommunications services with their own facilities or a combination of their own facilities and another carrier's services.¹⁶ The Commission further explained that if pure resellers were entitled to receive universal service support for providing resold services, they would receive double recovery of support: the support incorporated into the wholesale price of the resold services and the direct receipt of universal service support from the federal support mechanisms.¹⁷

8. In its supplemental comments, MSV seeks reconsideration of the Commission's determination that all "pure" resellers of telecommunications service are ineligible for universal service support. MSV argues that not *all* resellers should be barred from receiving support; rather, resellers should be deemed eligible for support when they resell the services of a facilities-based carrier that is not a recipient of universal service subsidies.¹⁸ In addition, MSV argues that, in the case of a nationwide system, a carrier should be able to place an advertisement in a nationally circulated publication in lieu of advertising locally in each area where it may provide service.¹⁹ MSV therefore asks the Commission to

¹⁴ 47 U.S.C. § 214(e)(1)(A). See also *First Report and Order*, 12 FCC Rcd at 8875-76, paras. 178-80. For purposes of section 214(e), the term "facilities" means any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 245(c)(1). *Id.* at para. 151.

¹⁵ 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

¹⁶ See *First Report and Order*, 12 FCC Rcd at 8875, para. 178. The Commission stated that a pure reseller uses none of its own facilities to serve a customer; rather, such a reseller purchases service from a facilities owner and resells that service to a customer. *Id.*

¹⁷ See *id.* at 8875-76, para. 179.

¹⁸ MSV Supplemental Comments at 2-3. MSV notes that the original petition for reconsideration of the *First Report and Order* was filed by AMSC Subsidiary Corporation (AMSC). AMSC subsequently changed its name to Motient Services, Inc. (MSI). On November 21, 2001, the Commission approved the assignment of MSI and TMI Communications and Company, LP to Mobile Satellite Ventures Subsidiary LLC (MSV). *Id.* at n.1.

¹⁹ *Id.* at 3-4.

affirm that advertising in a nationally circulated publication satisfies the statutory requirement to advertise "in media of general distribution."²⁰

2. Discussion

9. We deny MSV's petition for reconsideration of our determination regarding the eligibility of pure resellers to receive universal service support. MSV's petition does not rely on facts that have not previously been presented to the Commission.²¹ Rather, MSV merely wishes to argue its different interpretation of the statute. As the Commission already concluded, the statute expressly mandates that, in order to be eligible for universal service subsidies, a carrier must use its "own facilities" or a combination of its own facilities and another carrier's services in the provision of supported services. Resellers providing resold services from facilities-based carriers do not use their "own facilities" to provide the supported services. As such, pure resellers cannot receive support consistent with this statutory requirement.

10. Moreover, we decline to adopt MSV's request to conclude that advertising in a nationally circulated publication satisfies, *per se*, the statutory requirement to advertise the availability of supported services under section 214(e)(1)(B). In the *First Report and Order*, the Commission declined to adopt nationwide standards for interpreting section 214(e)(1)(B), because it agreed with the Joint Board that states are in a better position to evaluate local conditions and establish advertising guidelines appropriate for the state.²² MSV has presented no facts that were not previously considered by the Commission at that time. Accordingly, we deny MSV's petition for reconsideration.

B. Rural, Insular, and High Cost Support

1. Indexed Cap on High-Cost Loop Fund

a. Background

11. The Commission originally adopted the indexed cap on the high-cost loop fund in 1993 in order to limit fund growth and to moderate annual fluctuations in the size of the fund pending the Commission's consideration of changes to the high-cost support mechanisms.²³ After passage of the 1996 Act, the Commission reassessed the operation of the indexed cap and decided to retain the indexed cap until all carriers receive high-cost support based on a forward-looking economic cost mechanism.²⁴

12. In 2001, in the *Rural Task Force Order*, the Commission adopted the Rural Task Force's recommendation to re-base the high-cost loop fund for rural telephone companies and to retain an indexed cap on the high-cost loop fund.²⁵ The Commission concluded that adjustments to the indexed

²⁰ *Id.*

²¹ See 47 C.F.R. § 1.429.

²² *First Report and Order*, 12 FCC Rcd at 8860, para. 148.

²³ See *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 96-45, Order, 9 FCC Rcd 303, 305, paras. 17-18 (1993).

²⁴ See *First Report and Order*, 12 FCC Rcd at 8940, para. 302; *Fourth Reconsideration Order*, 13 FCC Rcd at 5340-41, para. 34.

²⁵ See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth (continued....)

cap would prevent excessive and erratic growth in the high-cost loop fund, while ensuring that rural telephone companies are able to provide supported services at affordable and reasonably comparable rates.²⁶ The Commission further determined that an indexed cap balances the various goals enunciated in section 254 of the Act, including, among others things, keeping the mechanism specific, predictable, and competitively neutral.²⁷

13. In its supplemental comments filed in response to the *Refresh the Record Public Notice*, RTC reiterated its objection to the cap on the high-cost loop fund.²⁸

b. Discussion

14. We deny RTC's petition for reconsideration. RTC has presented no facts that have not already been presented to the Commission or that warrant reconsideration of the Commission's earlier determinations.²⁹

2. Sale of Exchanges

a. Background

15. Section 54.305 of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line level of high-cost support for which the acquired exchanges were eligible prior to their transfer.³⁰ The Commission adopted this rule in the *First Report and Order* as a way to discourage carriers from transferring exchanges merely to increase their share of high-cost support during the transition to universal service support mechanisms based on the forward-looking economic cost of operating in a given exchange.³¹

16. In response to the *Refresh the Record Public Notice*, RTC filed supplemental comments seeking a ruling on its request to eliminate this aspect of the Commission's rules. RTC maintains that, in (Continued from previous page) _____

Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) (describing the operation of the high-cost loop support mechanism) (*Rural Task Force Order*). The Joint Board established the Rural Task Force to provide assistance in identifying the issues unique to rural carriers and to analyze the appropriateness of proxy cost models for rural carriers.

²⁶ See *id.* at 11264, para. 42.

²⁷ See 47 U.S.C. §§ 254(b)(3), (5). In addition to the universal service principles specified in the 1996 Act, Congress directed the Joint Board and the Commission to be guided by such other principles as they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest convenience, and necessity. See 47 U.S.C. § 254(b)(7). As recommended by the Joint Board, the Commission adopted competitive neutrality as an additional principle for universal service. See *First Report and Order*, 12 FCC Rcd at 8801-04, paras. 45-52.

²⁸ RTC Supplemental Comments at 6-7.

²⁹ See 47 C.F.R. § 1.429. See *Rural Task Force Order*, 16 FCC Rcd at 11264, para. 42 and *Fourth Reconsideration Order*, 13 FCC Rcd at 5343, para. 39; see also *Alenco Communications, Inc. v. Federal Communications Commission*, 201 F.3d 608 (5th Cir. 2000) (rejecting challenges by rural telephone companies that, among other things, the continued imposition of the overall cap on high-cost loop support and the corporate operations expenses limitation violated the Act.).

³⁰ 47 C.F.R. § 54.305.

³¹ See *First Report and Order*, 12 FCC Rcd at 8942-43, para. 39.

1997, the Commission did not explain adequately why this rule was needed to discourage carriers from placing unreasonable reliance on potential universal service support until it applied forward-looking economic costs to calculate support for all carriers. RTC also argues that the rule ignores the need to improve service in rural exchanges that have not been upgraded because of limited support available to larger carriers that have received support based on averaged costs.³²

b. Discussion

17. We conclude that the issues raised in RTC's supplemental comments concerning section 54.305 of the Commission's rules have already been addressed in the *Rural Task Force Order*.³³ RTC has presented no facts that were not already considered at that time. Moreover, RTC's assertion that the rule ignores the need for rural carriers to upgrade facilities they have acquired from non-rural carriers disregards the Commission's amendment of section 54.305 to provide additional funds in such instances.³⁴ Finally, we note that the Commission recently asked the Joint Board to review whether to retain or modify section 54.305 and we expect that the Joint Board and the Commission will address this issue in that proceeding based on a fresh record.³⁵ We therefore deny RTC's request.

3. Sufficiency of Support

a. Background

18. In the *First Report and Order*, the Commission declined to adopt PRTC's proposal that non-rural carriers serving Alaska or insular areas should be treated as rural carriers and allowed to postpone their conversion to the forward-looking economic cost methodology.³⁶ The Commission noted that the Joint Board's recommendation to postpone application of forward-looking support mechanisms to rural carriers was based on the size of rural carriers and the fact that rural carriers serve fewer subscribers and do not benefit from economies of scale and scope as much as non-rural carriers. Because large telephone companies, such as PRTC, possess sufficient economies of scale and scope to deal with the cost of providing service in their areas, the Commission determined that non-rural carriers serving Alaska and insular areas should move to the forward-looking cost methodology at the same time as other non-rural carriers.³⁷ In its supplemental comments, PRTC asks the Commission to grant its petition for

³² RTC Supplement Comments at 3.

³³ See *Rural Task Force Order*, 16 FCC Rcd at 11284-93, paras. 91-119 (comprehensive discussion of safety valve support).

³⁴ 47 C.F.R. § 54.305(b). See *Rural Task Force Order*, 16 FCC Rcd at 11284-93, paras. 91-119. We do not address in this Order any pending petitions for reconsideration of the safety valve provisions adopted in the *Rural Task Force Order*.

³⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-125 (rel. June 28, 2004); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, FCC 04J-2 (rel. August 16, 2004).

³⁶ See *First Report and Order*, 12 FCC Rcd at 8946, para. 315.

³⁷ See *id.*

reconsideration of the *First Report and Order* and treat non-rural carriers serving insular areas as rural carriers for purposes of calculating and distributing high-cost support.³⁸

19. In the *First Report and Order*, the Commission concluded that federal high-cost support should be limited to 25 percent of the difference between the forward-looking cost of providing supported services and a national benchmark, and federal high-cost support should be based only on the carriers' interstate – as opposed to carriers' intrastate and interstate – revenues.³⁹ In its petition for reconsideration, the Wyoming Commission asked the Commission to reconsider those decisions. Although the Commission subsequently reconsidered its 25 percent limit in the *Seventh Report and Order*⁴⁰ and all federal universal service support mechanisms are now funded by carriers' interstate and international revenues in accordance with a court decision,⁴¹ the Wyoming Commission continued to argue generally in its supplemental comments that federal high-cost support is inadequate to ensure the sufficiency, affordability, and comparability of rates in high-cost areas.⁴²

b. Discussion

20. We conclude that PRTC has presented no facts that were not previously considered by the Commission or would lead us to reconsider the Commission's decision in the *First Report and Order* not to treat PRTC as a rural carrier. PRTC simply reiterated previous arguments rejected by the Commission. We also note that PRTC raised similar arguments requesting to be treated as a rural carrier in response to the *Ninth Report and Order*, which the Commission denied.⁴³ We therefore deny PRTC's request for reconsideration of this issue. We note that we do not address at this time PRTC's petition for

³⁸ PRTC Supplemental Comments at 2.

³⁹ See *First Report and Order* at 12 FCC Rcd at 8925, 9190, paras. 269 & 808.

⁴⁰ See *Federal-State Joint Board on Universal Service, Access Charge Reform*, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8094, 8105-06, paras. 34 & 57 (1999) (*Seventh Report and Order*) (explaining that the Commission reconsidered and rejected its decision to limit federal universal support to 25 percent of the difference between the forward-looking cost of providing the supported services and a national benchmark). In this order, the Commission adopted the Joint Board recommendation, which provides that

to the extent a state possesses the ability to support its high-cost areas wholly through internal means, the methodology we adopt recognizes that no federal support is required in that state to enable reasonably comparable local rates. Conversely, to the extent that a state faces larger rate comparability challenges than can be addressed internally, our forward-looking methodology places no artificial limits on the amount of federal support that is available, thus resulting in sufficient support as required by the 1996 Act. *Id.* at 8094, para. 34.

⁴¹ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999).

⁴² Wyoming Commission Supplemental Comments at 2. We note that comments and reply comments in response to the *Refresh the Record Public Notice* were due August 20 and September 4, 2001, respectively. The Wyoming Commission submitted its comments to refresh the record on December 19, 2001.

⁴³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22637, para. 139 (2003) (*Remand Order*), appeal pending sub nom. *Qwest Communications International Inc. v. FCC & USA*, Tenth Cir. No. 03-9617; *SBC Communications Inc. v. FCC & USA*, Tenth Cir. No. 04-9518; and *Vermont Public Service Board v. FCC & USA*, Tenth Cir. No. 04-9519.

clarification and/or reconsideration of the *Remand Order*⁴⁴ or its request in an *ex parte* letter, filed on June 6, 2003, that the Commission create a separate category of “non-rural insular” carriers for purposes of intrastate high-cost support.⁴⁵

21. As the Wyoming Commission acknowledged in its supplemental comments, its specific concerns with the Commission’s *First Report and Order* (i.e., the 25 percent limit for non-rural carriers described above and the decision to limit funding for the federal high-cost support mechanism to interstate revenues) have been subsequently addressed.⁴⁶ In these supplemental comments, the Wyoming Commission makes only general assertions about the continued insufficiency of the federal high-cost support mechanism for non-rural carriers and the affordability of the total bill to be paid by Wyoming consumers. We find that the Wyoming Commission fails to state with particularity the respects in which it believes the action taken should be changed⁴⁷ and, therefore, we deny its petition for reconsideration of *First Report and Order*.

22. We note that since the Wyoming Commission filed its supplemental comments, the Commission has revisited how non-rural carriers receive high-cost support. In the *Remand Order*, the Commission modified the cost benchmark used to calculate support for non-rural carriers, established a rate review process to assess whether rates in rural areas served by non-rural carriers are reasonably comparable to urban rates nationwide, and concluded that states should be permitted to request further federal action, if necessary, based on a showing that federal and state action together are not sufficient to achieve reasonable comparability.⁴⁸ The Commission sought further comment on the procedures for filing and processing state requests for further federal action, as well as additional inducements for state action, including additional targeted federal support.⁴⁹ In the *Remand Order*, the Commission also denied the Wyoming Commission’s petition for reconsideration of the *Ninth Report and Order*, in which the Wyoming Commission raised similar arguments regarding the sufficiency of support for non-rural carriers.⁵⁰

⁴⁴ Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45 (filed Jan. 14, 2004).

⁴⁵ Letter from Gregory J. Vogt, Counsel for Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-45, 00-256, 98-77, 98-166 (filed June 6, 2003). *See also Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21232-35, paras. 135-40 (1999).

⁴⁶ Wyoming Commission Supplemental Comments at 1.

⁴⁷ 47 C.F.R. § 1.429(c) (providing that the “petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken should be changed.”).

⁴⁸ *See, e.g., Remand Order* at 22614-16, paras. 93-96.

⁴⁹ *See id.* at 22626-33, paras. 114-32.

⁵⁰ *See id.* at 22639-40, paras. 143-45.

C. Schools, Libraries, and Rural Health Care Providers

1. Wide Area Networks

a. Background

23. In the *Fourth Reconsideration Order*, the Commission determined, on its own motion, that costs incurred by states, schools, or libraries to build or purchase wide area networks (WANs) to provide telecommunications would not be eligible for universal service discounts.⁵¹ The Commission found that such networks do not meet the definition of services eligible for support under the universal service discount program because: (1) the building and purchasing of WANs do not meet the statutory definition of “telecommunications” or “telecommunications service”;⁵² (2) WANs are not internal connections because they do not provide connections within a school or library; and (3) WANs built and purchased by schools and libraries do not appear to fall within the narrow provision allowing support for Internet access because WANs provide broad-based telecommunications.⁵³

24. In its petition, SECA asks the Commission to find that WANs purchased by schools and libraries should be supported by federal universal service funds or create an exemption that would permit schools and libraries to receive discounts for Instructional Television Fixed Service (ITFS) systems.⁵⁴

b. Discussion

25. We deny SECA’s petition for reconsideration of the *Fourth Reconsideration Order*. We conclude that SECA failed to present facts that were not previously considered by the Commission or would lead us to reconsider the Commission’s findings. Moreover, we note that, subsequent to the filing of SECA’s petition for reconsideration, the Commission held that support may be provided under telecommunications service or Internet access for service provider charges for capital investments for WANs.⁵⁵ This subsequent action effectively provided SECA an avenue to obtain support for the functionality provided by either a WAN or ITFS technology, thereby largely mooted its petition for reconsideration. Therefore, we deny SECA’s request to provide discounts to schools and libraries for either the purchase of WANs or ITFS systems. We note that pursuant to the *Third Schools Order* and

⁵¹ See *Fourth Reconsideration Order*, 13 FCC Rcd at 5430-31, para. 193. See also 47 C.F.R. § 54.518 (providing that to the extent that states, schools, or libraries build or purchase a WAN to provide telecommunications services, the cost of such WANs shall not be eligible for universal service discounts).

⁵² See 47 U.S.C. § 151(43) (the term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received). See also 47 U.S.C. § 151(46) (the term “telecommunications service” is the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used).

⁵³ See *Fourth Reconsideration Order*, 13 FCC Rcd at 5430-31, para. 193.

⁵⁴ SECA Petition at 1.

⁵⁵ See *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 18598 (2000); *Request for Review by the Department of Education of the State of Tennessee, Integrated Systems and Internet Solutions, Inc., and Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, Order, 14 FCC Rcd 13734 (1999).

Second Further Notice, the issue of WAN's eligibility is currently under consideration by the Commission.⁵⁶ SECA's concerns regarding this issue will be considered in that open proceeding.

2. Accounting and Reporting Requirements

a. Background

26. Section 254(h)(1)(B) provides that "[a]ll telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service . . . provide such services to elementary schools, secondary schools, and libraries for educational purposes" at discounted rates.⁵⁷ Carriers providing discounted service pursuant to section 254(h)(1)(B) are entitled to receive reimbursement from the universal service support fund.⁵⁸

27. In the *First Report and Order* and subsequent implementing orders, the Commission established the schools and libraries universal service support mechanism and assigned the day-to-day tasks of running the program to the Universal Service Administrative Company (Administrator).⁵⁹ Under this program, eligible schools, libraries, and consortia that consist of eligible schools and libraries, may apply to the Administrator for discounts on eligible telecommunications services, Internet access, and internal connections.⁶⁰ After an applicant is approved for discounted service, the Administrator will reimburse the service provider out of the universal service fund for the discounted services.

28. In its petition and supplemental comments filed in response to the *Refresh the Record Public Notice*, USTA seeks clarification that the customer authorized to place a bona fide request for discounts on eligible telecommunications services, such as the lead consortium member, is responsible for record-keeping and the proper allocation of universal service benefits.⁶¹ USTA argues that telecommunications service providers should not be responsible for determining universal service benefit allocations among individual members of aggregated purchasing groups nor should they be required to maintain records other than those they keep in the normal course of their business.⁶²

b. Discussion

29. We clarify requirements as set forth herein and otherwise deny USTA's petition for reconsideration in this area. With regard to USTA's request concerning record-keeping responsibility under the schools and libraries program, we note that section 54.501(d)(3) of the Commission's rules provides that service providers shall keep and retain records of rates charged to and discounts allowed for

⁵⁶ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26942-44, paras. 72-77 (2003) (*Third Schools Order and Second Further Notice*).

⁵⁷ 47 U.S.C. § 254(h)(1)(B).

⁵⁸ 47 U.S.C. § 254(h)(1)(B)(ii).

⁵⁹ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, FCC 04-190 at paras. 47-49 (rel. August 13, 2004) (*Fifth Schools Order*).

⁶⁰ 47 C.F.R. §§ 54.502, 54.503.

⁶¹ USTA Supplemental Comments at 1-2.

⁶² *Id.* at 1 (citing USTA Petition for Reconsideration of the *First Report and Order* at 20, filed July 17, 1997).

eligible schools and libraries – on their own or as part of a consortium.⁶³ In the *Fifth Schools Order*, the Commission amended section 54.516 of its rules to require both beneficiaries and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular Funding Year.⁶⁴ As a result, USTA's arguments in its petition concerning record-keeping are now moot.

30. As for the proper allocation of benefits, we note that as part of the application process for the schools and libraries program, an applicant is required to provide specific information on its FCC Form 471 about the eligible services that it has ordered, its cost, and the discount that it is requesting for such services.⁶⁵ If the applicant is representing a consortium, the applicant is required to calculate either the specific discount for each member of the consortium or the shared discount for the consortium as a whole.⁶⁶ The allocation methodology should be set forth in the contract for services executed with the service provider. If there is no contract for services, as might be the case with some tariffed services, the applicant should provide the service provider with a copy of its allocation methodology.⁶⁷ After the applicant has received approval of its request for universal service support, it may notify the provider to begin service. Once the applicant receives service from the provider, the applicant must notify the Administrator to approve the flow of universal service funds to the provider as set forth on its FCC Form 471.⁶⁸

3. Support for Advanced Services

a. Background

31. Under the Commission's rules, schools, libraries, and consortia may purchase and receive discounts for any commercially available telecommunications service from telecommunications carriers.⁶⁹ Schools and libraries may also receive discounts for Internet access and internal connections provided by either telecommunications carriers or non-telecommunications carriers.⁷⁰

32. LN/GW argue in their joint petition that the current Part 54 regulations limit the ability of schools and libraries to choose the package of communication services that will meet their needs because the Commission has defined the terms "telecommunications services" and "telecommunications carriers" too narrowly for the purposes of the schools and libraries program. Thus, LN/GW ask the Commission to reconsider the current Part 54 regulations to allow schools and libraries to purchase a broader scope of advanced telecommunications (i.e., innovative, non-commercially available

⁶³ 47 C.F.R. § 54.501(d)(3). Service providers must make these records available for public inspection.

⁶⁴ *Fifth Schools Order* at para. 47; 47 C.F.R. § 54.516(a).

⁶⁵ See FCC Form 471, Schools and Libraries Universal Service Services Ordered and Certification Form.

⁶⁶ See *id.*, Item 10(b) at 18.

⁶⁷ See <http://www/sl/universalservice.org/reference/costaloc.asp>, Cost Allocation Guidelines for Consortia Comprising Eligible and Ineligible Entities.

⁶⁸ See *First Report and Order*, 12 FCC Rcd at 9081-82, para. 580.

⁶⁹ See 47 C.F.R. §§ 54.501(b), (c), (d).

⁷⁰ See 47 C.F.R. §§ 54.504; 54.517(b).

technologies) from any provider.⁷¹ LN/GW also ask the Commission to incorporate in the definition of “advanced services,” the definition provided in “advanced telecommunications capabilities” set forth in section 706(b) of the 1996 Act.⁷²

b. Discussion

33. We conclude that LN/GW raise no facts that have not previously been considered by the Commission or would warrant expanding the services eligible for discounts under the schools and libraries program at this time. In the *First Report and Order*, the Commission found that the broad purposes of section 254(h)(2) supported its decision to provide discounts for internal connections and Internet access.⁷³ After analyzing the statute and the record, the Commission determined that the public interest would not be served at that time by providing discounts for additional non-telecommunications services.⁷⁴ We find no reason to depart from the Commission’s previous decisions in this area based on the current record. Accordingly, we deny LN/GW’s request to redefine or expand the list of services that may be eligible for support under the schools and libraries program at this time. We note, however, that in the *Third Schools Order and Second Further Notice* the Commission formalized the process for updating the eligible services list, beginning with Funding Year 2005, in order to promote greater transparency of what is eligible for support under the schools and libraries support mechanism.⁷⁵ Under the new rule, the eligible services list is open to comment on an annual basis, allowing any party to provide comments concerning the content and application of the eligible services list. As stated above, the issue of the eligibility of WANs is currently under consideration by the Commission, and LN/GW’s concerns regarding this issue will be considered in that open proceeding.⁷⁶

D. Administration of Support Mechanisms

1. Contribution Methodology

a. Background

34. In its comments to refresh the record, AT&T requests the Commission to reconsider the universal service contribution methodology. In the *First Report and Order*, the Commission determined that contributions to universal service would be based on contributors’ historical gross billed end-user telecommunications revenues.⁷⁷ AT&T urges the Commission to eliminate the lag between the accrual

⁷¹ LN/GW Petition at 4-5 (citing WAN applications using bandwidth on the local cable system and wireless WANs as examples of alternative technologies).

⁷² *Id.* at 7.

⁷³ *First Report and Order*, 12 FCC Rcd at 9009, paras. 436-37. *See also* 47 U.S.C. § 254(h)(2) (Commission shall establish rules to enhance access to advanced telecommunications and information services for schools and libraries).

⁷⁴ *First Report and Order*, 12 FCC Rcd at 9009-15, paras. 436-48. *See* 47 C.F.R. § 54.502.

⁷⁵ *Third Schools Order and Second Further Notice*, 18 FCC Rcd at 26928-29, para. 40. *See also* 47 C.F.R. § 54.522.

⁷⁶ *See supra* para. 25.

⁷⁷ *See First Report and Order*, 12 FCC Rcd at 9206, para. 843.

and assessment of universal service contribution obligations and adopt a flat-rated collect-and-remit contribution system.⁷⁸

b. Discussion

35. We deny AT&T's petition to reconsider the universal service contribution methodology. The Commission released an order adopting interim modifications to the contribution methodology in December 2002.⁷⁹ In that order, the Commission, among other things, eliminated the lag between the accrual and assessment of universal service contribution obligations as of April 1, 2003, by basing contributions on projected collected end-user telecommunications revenues. The Commission also explicitly rejected a collect-and-remit system.⁸⁰ We note, however, that the Commission requested further comment on three specific connection-based proposals.⁸¹ We find that AT&T raises no facts that were not considered and addressed in the *Contribution Methodology Order*. Therefore, we dismiss AT&T's request to eliminate the lag as moot and deny the remainder of its petition.

2. Payphone Service Providers

a. Background

36. In the *First Report and Order*, the Commission directed all interstate telecommunications carriers to contribute to the universal service fund pursuant to section 254(d).⁸² The Commission also exercised its permissive contribution authority to require payphone providers and others that provide interstate telecommunications for a fee to contribute to the universal service fund.⁸³ Although by definition independent payphone service providers are aggregators and not telecommunications carriers, the Commission found that independent payphone service providers should be required to contribute to universal service as "providers of interstate telecommunications" because they "are connected to the PSTN and compete with mandatory contributors to universal service."⁸⁴ The Commission reasoned that if such providers were not required to contribute, telecommunications carriers might divest their payphone operations solely to avoid universal service contributions.

37. In its supplemental comments filed in response to the *Refresh the Record Public Notice*, APCC asked the Commission to revisit its determination to require independent payphone service

⁷⁸ AT&T Comments at 2.

⁷⁹ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 92-237, 99-200, 95-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Contribution Methodology Order*).

⁸⁰ *Id.* at 24974, paras. 38-39.

⁸¹ See *id.* at 24984, para. 66.

⁸² See *First Report and Order*, 12 FCC Rcd at 9173, para. 777.

⁸³ See *id.* at 9183, para. 794.

⁸⁴ *Id.* at 9185, para. 797.

providers to contribute directly to universal service.⁸⁵ In the alternative, APCC requests that the Commission clarify that interexchange carriers and local exchange carriers may not pass-through their universal service contributions to payphone service providers.⁸⁶

b. Discussion

38. We deny APCC's petition to reconsider the Commission's decision to require payphone service providers to contribute to universal service. APCC's petition does not rely on facts that have not previously been presented to the Commission.⁸⁷ APCC merely disagrees with the Commission's policy decision.

39. We clarify, however, that to the extent an independent payphone service provider purchases telecommunications for resale in a payphone service and contributes directly to universal service, it should not be considered an end user for purposes of reporting assessable interstate telecommunications revenues and therefore should not be subject to federal universal service pass-through charges.⁸⁸ Allowing such a practice results in a double burden for payphone providers that use resold telecommunications services. As described in more detail in the instructions to the Telecommunications Reporting Worksheet, FCC Form 499, such revenues are considered "carrier's carrier revenues" or "revenues from resellers."⁸⁹ For example, if an independent payphone service provider purchased a payphone line from a local exchange carrier to provide payphone service and contributed directly to universal service for that line, that local exchange carrier should report the payphone line revenues on Line 115, "Telecommunications provided to other universal service contributors for resale" on the FCC Form 499-Q. Accordingly, that local exchange carrier would not be directly assessed on the basis of those payphone line revenues and should not pass through universal service charges for that payphone line to the independent payphone service provider.⁹⁰ We, therefore, grant APCC's request for clarification as provided herein.

3. Broadcasters

a. Background

40. In the *Fourth Reconsideration Order*, the Commission found that broadcasters do not compete in any meaningful way with common carriers that are required to contribute to universal service because broadcasters primarily transmit video programming, a service generally not provided by common

⁸⁵ APCC Comments at 8-11.

⁸⁶ *Id.* at 11. APCC refers to this as the "triple payment problem" – direct contribution, pass-through from the interexchange carrier, and pass-through from the local exchange carrier.

⁸⁷ See 47 C.F.R. § 1.429.

⁸⁸ See *First Report and Order* at 9207-08, paras. 845-48. In these paragraphs, the Commission rejected basing assessments on gross revenues because that would lead to a double counting problem for resellers. If payphone service providers contribute to universal service and are also considered end users, the same double counting occurs.

⁸⁹ See Instructions to Telecommunications Reporting Worksheet, FCC Form 499-Q, at 11.

⁹⁰ If payphone service providers qualify for the *de minimis* exemption and do not contribute directly to universal service, however, payphone service providers should be considered end users for purpose of calculating universal service contributions. See *id.*

carriers.⁹¹ The Commission therefore determined that the public interest would not be served if it were to require broadcasters, including ITFS licensees, that engage in non-common carrier interstate telecommunications to contribute to universal service.⁹² The Commission stated that it would monitor their provision of such services, and if it determined that broadcasters compete with common carriers that are required to contribute to universal service, it would revisit its exclusion of broadcasters from the contribution requirements.⁹³ In an *Errata* to the *Fourth Reconsideration Order*, the Commission clarified that the exemption for broadcasters of video programming extends to all broadcasters.⁹⁴

41. Despite the Commission's statement in the *Fourth Reconsideration Order* equating ITFS licensees with broadcasters, WCA seeks further clarification that all ITFS licensees are exempt from universal service fund contribution requirements under section 54.706 of the Commission's rules. WCA argues that ambiguity exists as to whether ITFS constitutes a "broadcast" service entitled to exemption from universal service obligations.⁹⁵ To give effect to the Commission's statement in the *Fourth Reconsideration Order*, WCA states that the Commission should clarify section 54.706(d) by adding "ITFS licensees" to list of entities that are exempt from universal service fund contribution obligations.⁹⁶

42. In its petition, NPR asks the Commission to clarify its rules by exempting NPR by name or by reference to its status as a "public broadcasting entity"⁹⁷ from the obligation to contribute to the universal service fund. NPR is a non-profit membership organization that produces and distributes noncommercial radio programming. NPR also manages and operates the Public Radio Satellite System (PRSS) and leases excess PRSS capacity for other uses in order to subsidize the cost of maintaining the PRSS.⁹⁸ NPR asserts that it would be contrary to the federal interest in the PRSS and contrary to the public interest served by the PRSS to divert revenue used to support and sustain the PRSS to the universal service fund.⁹⁹

⁹¹ *Fourth Reconsideration Order*, 13 FCC Rcd at 5475-76, para. 283 (1997).

⁹² *Id.* We note that, in most cases, entities providing interstate telecommunications on a non-common carrier basis must contribute to universal service pursuant to the Commission's permissive authority over "other providers of interstate telecommunications." See *First Report and Order*, 12 FCC Rcd at 9182, para. 793. Currently, however, broadcasters providing interstate telecommunications on a non-common carrier basis are not required to contribute to the universal service fund.

⁹³ *Fourth Reconsideration Order*, 13 FCC Rcd at 5475-76, para. 283 (1997).

⁹⁴ *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Errata, DA 98-158 (rel. Jan. 29, 1998) (*Errata*)

⁹⁵ See WCA Petition at 3-4.

⁹⁶ See *id.*

⁹⁷ See 47 U.S.C. § 397(1). "Public broadcasting entity" is defined as "any licensee or permittee of a public broadcast station, or any non-profit institution primarily in the production, acquisition, distribution, or dissemination of educational and cultural television or radio programs.

⁹⁸ NPR Petition at 1-3.

⁹⁹ *Id.* at 4-5. NPR states that in passing the Public Telecommunications Act of 1998, Congress appropriated \$200 million for both public television and public radio satellite systems to continue and expand the nationwide, satellite-interconnected system of distributing public telecommunications services. NPR maintains that Congress specifically endorsed the leasing of any excess capacity for other uses in order to subsidize the cost of maintaining the PRSS.

b. Discussion

43. We deny the petitions filed by NPR and WCA, to the extent described herein. Our rules already make clear that all broadcasters, including NPR and ITFS licensees, are not required to contribute to the universal service fund to the extent they provide interstate telecommunications on a non-common carrier basis. Since the release of the *Fourth Reconsideration Order* and subsequent *Errata*, section 54.706(d) has remained unchanged. To reiterate, the Commission found that the public interest would not be served if the Commission were to require broadcasters, including NPR, to contribute to universal service based on the provision of non-common carrier telecommunications.¹⁰⁰ In addition, by specifically mentioning ITFS licensees in its discussion for why broadcasters should not have to contribute to universal service, the Commission intended to treat ITFS licensees in the same manner as other broadcasters for universal service purposes. As such, modification of section 54.706(d) is unnecessary.

4. Multipoint Distribution Service

a. Background

44. In the *First Report and Order*, the Commission found that entities providing direct broadcast satellite (DBS) services, open video services (OVS), and cable leased access would not be required to contribute on the basis of revenues derived from non-common carrier services.¹⁰¹ Such entities are also exempt to the extent that they provide telecommunications solely to serve their internal needs.¹⁰² In the *Fourth Reconsideration Order*, the Commission determined that the public interest would not be served if it were to require broadcasters, including ITFS licensees, that engage in non-common carrier interstate telecommunications to contribute to universal service.¹⁰³

45. In its petition for reconsideration of the *Fourth Reconsideration Order*, WCA argues that in its determinations to exempt OVS, cable leased access, DBS, and broadcasters the Commission intended to exempt all providers of video programming from universal service contribution obligations because they do not provide a service similar to that provided by traditional common carriers.¹⁰⁴ WCA argues that multipoint distribution service (MDS) licensees that lease capacity for wireless cable use are functionally equivalent to OVS, cable, and DBS, and thus it would be inequitable to require universal service contributions by MDS licensees.¹⁰⁵ According to WCA, the Commission should therefore revise

¹⁰⁰ *Fourth Reconsideration Order*, 13 FCC Rcd at 5475-76, para. 283. As the Commission notes in the *Fourth Reconsideration Order*, broadcasters providing interstate telecommunications to others are treated as end users and are not required to contribute to universal service based on those revenues. *Id.* at 5475, n.833.

¹⁰¹ *See First Report and Order*, 12 FCC Rcd at 9176, para.781.

¹⁰² For self-providers of interstate telecommunications, telecommunications are incidental to their primary non-telecommunications business and constitute a minimal percentage of their total business revenues. *See id.* at 9185, para. 799.

¹⁰³ *Fourth Reconsideration Order*, 13 FCC Rcd at 5475-76, para. 283 (1997). *See supra* n.83.

¹⁰⁴ WCA Petition at 5-8.

¹⁰⁵ *Id.* (citing *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service; Implementation of Section 309(j) of the Communications Act- Competitive Bidding*, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995)).

section 54.706(d) to include MDS licensees that lease capacity to wireless cable operators on the list of entities exempt from universal service obligations.¹⁰⁶

b. Discussion

46. Although we deny WCA's petition and do not revise our rules to include MDS licensees that lease capacity to wireless cable operators on the list of those entities exempt from universal service obligations, we clarify that MDS licensees are not required to contribute to the universal service fund on the basis of revenues derived from broadcasting services. We further clarify that MDS licensees providing interstate telecommunications to others for a fee on a non-common carrier basis will not be exempt from contribution requirements.¹⁰⁷ Such a result is consistent with section 254(d) of the 1996 Act and sections 54.706(b) and (c) of the Commission's rules.¹⁰⁸ We find WCA has raised no facts that would prompt us to exempt an MDS licensee that chooses a non-common carrier status but provides services identical to a common carrier licensee, and thus competes with the common carrier, from universal service contribution obligations.

5. De Minimis Exemption

a. Background

47. Section 254(d) of the Act permits the Commission to exempt a carrier or class of carriers from universal service fund contribution requirements if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contributions would be *de minimis*.¹⁰⁹ In the *First Report and Order*, the Commission determined that the *de minimis* exemption would apply to carriers whose annual contributions are less than the Administrator's administrative costs of collection or \$100.00.¹¹⁰ The Commission subsequently increased the *de minimis* contribution threshold from \$100.00 to \$10,000.00, concluding that the costs associated with identifying contributors, processing and collecting contributions, and providing guidance on how to complete the Telecommunications Reporting Worksheet should also be included in the Administrator's administrative costs.¹¹¹

48. In the *Fourth Reconsideration Order*, the Commission further concluded that, in order to maintain the sufficiency of the universal service support mechanisms, entities reselling telecommunications and qualifying for the *de minimis* exemption must notify the underlying facilities-based carriers from which they purchase telecommunications that they are exempt from contribution requirements and must be considered end users for universal service contribution purposes. Accordingly, the Commission directed underlying carriers to report revenues derived from providing telecommunications to entities qualifying for the *de minimis* exemption as end-user revenues on the appropriate lines of the Telecommunications Reporting Worksheet.¹¹²

¹⁰⁶ WCA Petition at 5-8.

¹⁰⁷ See *First Report and Order*, 12 FCC Rcd at 9184, para. 796.

¹⁰⁸ See 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706(b), 54.706(c).

¹⁰⁹ See 47 U.S.C. § 254(d).

¹¹⁰ See *First Report and Order*, 12 FCC Rcd at 9187, paras. 802-03.

¹¹¹ See *Fourth Reconsideration Order*, 13 FCC Rcd at 5482, paras. 297-98. See also 47 C.F.R. § 54.708.

¹¹² See *Fourth Reconsideration Order*, 13 FCC Rcd at 5482, para. 298.

49. In its petition, CTIA seeks reconsideration of the Commission's decision in the *Fourth Reconsideration Order* to require underlying carriers to account for revenues from resellers that fall under the *de minimis* exemption. CTIA argues that if resale revenues are to be included in the universal service contribution factor, regardless of the *de minimis* exemption, then the resellers themselves should be responsible for making the contribution and the *de minimis* exemption should be eliminated for those carriers altogether. CTIA further argues that if the underlying carrier treats the reseller's revenues as end-user revenues, the universal service contribution that is ultimately passed through to the seller's customers would be based on the wholesale revenues received from the reseller. According to CTIA, this understates the total industry contribution base.¹¹³

50. In addition, CTIA states that it is unclear whether underlying carriers, including CMRS carriers, also have a general obligation to identify their resale customers qualifying for the *de minimis* exemption. As such, CTIA asks the Commission to clarify the extent to which CMRS carriers are obligated to identify those customers and account for those customer's revenues in the CMRS carriers' universal service contribution calculations.¹¹⁴

b. Discussion

51. We conclude that CTIA has presented no facts that were not previously considered by the Commission or that warrant reconsideration of the Commission's determination that underlying carriers should account for revenues from resellers that fall under the *de minimis* exemption. Section 254(d) explicitly allows the Commission to exempt carriers or classes of carriers from contribution requirements if their contributions would be *de minimis*. Moreover, contrary to CTIA's assertions, directing underlying carriers to exclude revenues from *de minimis* resellers would reduce, rather than enlarge, the total contribution base. We therefore deny CTIA's request for reconsideration of this matter.

52. We clarify, however, that CMRS carriers are required to report revenues derived from providing telecommunications to entities qualifying for the *de minimis* exemption as end-user revenues on the appropriate lines of the Telecommunications Reporting Worksheet.¹¹⁵ Nothing in the Commission's rules or implementing orders relieves CMRS carriers of this obligation. We further clarify that our current rules do not require underlying facilities-based carriers or CMRS carriers to identify specifically on the Telecommunications Reporting Worksheet their resale customers qualifying for the *de minimis* exemption.¹¹⁶

¹¹³ CTIA Petition at 4-6.

¹¹⁴ *Id.* at 2-4.

¹¹⁵ See Telecommunications Reporting Worksheet, FCC Form 499-A, Instructions for Completing the Worksheet for Filing Contributors to Telecommunications Relay Service, Universal Service, Number Administration, and Local Numbering Portability Support Mechanisms, at 22.

¹¹⁶ However, carriers must have documented procedures to ensure that they report as "revenues from resellers" only revenues from entities that reasonably would be expected to contribute to universal service. The procedures should include, but are not limited to, maintaining the following information on resellers: Filer 499 ID; legal name; address; name of a contact person; and phone number of the contact person. The filer should verify that each reseller will: 1) resell the filer's services in the form of telecommunications; and 2) contribute directly to the federal universal service support mechanisms. Accordingly, an underlying carrier is required to determine that a seller does not qualify for the *de minimis* exemption and makes direct contributions before it can treat such revenues as "revenues from resellers." See Telecommunications Reporting Worksheet, FCC Form 499-A, Instructions for Completing the (continued....)

IV. ORDERING CLAUSES

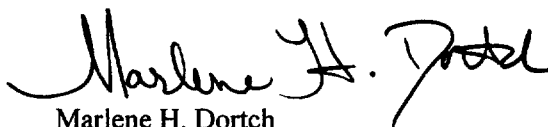
53. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 214, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 214, 254, 303(r), 403, and 410, this ORDER ON RECONSIDERATION IS ADOPTED, effective 30 days after publication of the text in the Federal Register.

54. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.291 and 1.429 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.429, the petitions for reconsideration and supplemental notices of the petitions for reconsideration of the *First Report and Order* filed by the American Public Communications Council in CC Docket No. 96-45 is GRANTED, in part, and DENIED, in part.

55. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.291 and 1.429 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.429, the petitions for reconsideration and supplemental notices of the petitions for reconsideration of the *First Report and Order* filed by the AMSC/Mobile Satellite Ventures Subsidiary LLC, AT&T, Puerto Rico Telephone Company, Rural Telephone Coalition, United States Telephone Association, and Wyoming Public Service Commission in CC Docket No. 96-45 are DENIED.

56. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.291 and 1.429 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.429, the petitions for reconsideration of the *Fourth Reconsideration Order* filed by the Cellular Telecommunications and Internet Association, Lan Neugent and Greg Weisiger, National Public Radio, Southern Education Communications Association, and Wireless Cable Association in CC Docket No. 96-45 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A**List of Parties – *First Report and Order***

(Continued from previous page) _____

Worksheet for Filing Contributors to Telecommunications Relay Service, Universal Service, Number Administration, and Local Numbering Portability Support Mechanisms, at 21.

(FCC 97-157)

The following parties filed supplemental comments to refresh their petitions for reconsideration of rules adopted in the First Report and Order (FCC 97-157).

CommenterAbbreviation

American Public Communications Council

APCC

AT&T

AT&T

Mobile Satellite Ventures Subsidiary LLC

MSV

Puerto Rico Telephone Company

PRTC

Rural Telephone Coalition

RTC

United States Telecom Association

USTA

Wyoming Public Service Commission (late filed petition)

Wyoming Commission

The following parties filed reply comments on the supplemental comments.

CommenterAbbreviation

Association of Communications Enterprises

ASCENT

Sprint Corp.

Sprint

Verizon

Verizon

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Federal-State Joint Board on Universal Service, Order on reconsideration,
CC Docket No. 96-45.*

Through this Order, the Commission addresses numerous petitions for reconsideration of two prior Commission Orders, both released in 1997, concerning universal service. This Order dismisses many of the issues raised as moot, particularly where the Commission subsequently acted to address an issue in other proceedings. Many of the actions affirmed here predate my tenure at the Commission. In other instances, the Order dismisses petitions for reconsideration where the same or similar issues have been raised and are pending in other proceedings. Given the age of the petitions for reconsideration that we address here and the need for the Commission to manage efficiently its own dockets, I support this Order.

While I support efforts to reduce the Commission's backlog, there are numerous fundamental universal service issues implicated here, including contribution methodology, the capping of the high cost fund, the sale of exchanges, and the sufficiency of support for carriers in insular areas. Each of these important subjects is raised more broadly in other open proceedings before the Commission. I hope that we move forward expeditiously with our consideration of those proceedings and my concurrence to this item does not prejudge my substantive policy position on the issues raised there.

APPENDIX B

**List of Parties – Fourth Order on Reconsideration
(FCC 97-420)**

The following parties filed petitions for reconsideration of the Fourth Order on Reconsideration (97-420).

<u>Commenter</u>	<u>Abbreviation</u>
Cellular Telecommunications & Internet Assoc.	CTIA
Lan Neugent and Greg Weisiger	LN/GW
National Public Radio	NPR
North Dakota Public Service Commission	NDPSC
South Dakota Public Utilities Commission	SDPUC
Southern Education Communications Assoc.	SECA
Washington Utilities and Transportation Commission	Washington UTC
Wireless Cable Association	WCA

The following parties filed comments on the petitions for reconsideration.

<u>Commenter</u>	<u>Abbreviation</u>
Ameritech	Ameritech
AT&T	AT&T
Bell Atlantic	Bell Atlantic
BellSouth Corp.	BellSouth
Rural Telephone Coalition	RTC
Washington Association of Internet Service Providers	Washington ISP

The following party filed a reply to comments on the petitions for reconsideration.

<u>Commenter</u>	<u>Abbreviation</u>
Lan Neugent and Greg Weisiger	LN/GW

**STATEMENT OF
COMMISSIONER KEVIN J. MARTIN
Approving in Part, Concurring in Part, Dissenting in Part**

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Today's decision addresses various pending petitions for reconsideration filed in response to the Commission's 1997 Universal Service decision and certain subsequent orders.

As I have stated previously, I am increasingly concerned by the recent decision to revisit whether the Commission should adopt a universal service support mechanism for rural carriers based on hypothetical forward-looking economic costs.¹¹⁷ Today's decision raises similar concerns regarding the Commission's characterization of how to address universal service high cost support in rural areas. I continue to have concerns with this approach and believe that we could better achieve sufficient universal service support and comparability of rates if we base our universal service support system on actual rather than forward looking costs. Accordingly, I concur in the result of this part of the Order.

The Commission also rejects the Puerto Rico Telephone Company's ("PRTC") proposal to treat non-rural carriers serving Alaska or insular areas as rural carriers for purposes of calculating and distributing high-cost support. The decision also fails to address the PRTC's separate request—which has been pending for more than one year—that the Commission create a separate category of "non-rural insular" carriers for purposes of intrastate high-cost support.¹¹⁸ As a result of the Commission's modification of its universal service program, the PRTC lost all of its high-cost loop support within in a four year period.

The record demonstrates the unique challenges facing insular areas, such as Puerto Rico, that have exceedingly low subscribership rates and unusually high costs to deploy and maintain affordable service to underserved rural areas. Based on this evidence, I believe that the Commission could have moved forward to grant the PRTC's proposal. Accordingly, I dissent to this part of the Order.

¹¹⁷ See Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, FCC 04-125 (rel. June 28, 2004).

¹¹⁸ Ex Parte of Puerto Rico Telephone Company, Inc., from Greg J. Vogt, Counsel for Puerto Rico Telephone Company, Inc., CC Docket Nos. 00-256, 96-45, 98-77, 98-166 (February 28, 2003).

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Federal-State Joint Board on Universal Service*, Order on Reconsideration
(CC Docket No. 96-45)

I support today's effort to resolve outstanding petitions for reconsideration of the Commission's early universal service decisions. It is important that the Commission reduce its backlog and clean out its regulatory closets. But I limit my support to concurring because many of these petitions involve fundamental issues that go to the very core of how we have organized the contribution and distribution mechanisms for universal service support. These petitions predate my participation in this process. Many are also the subject of further rulemaking proceedings. As a result, I expect there will be opportunities in the future to rethink the Commission's earlier approaches. Therefore, I remain open to taking a fresh look at all of these issues.

One issue mentioned in today's decision strikes me as demanding our attention sooner, rather than later: insular areas. Since 1999, the Commission has had open and outstanding a Notice of Proposed Rulemaking on universal service issues affecting insular areas. While these areas may benefit from our present universal service support mechanisms, the Commission has acknowledged that it must address separately the communications needs of remote and insular communities. Indeed, Congress specifically directed the Commission to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, *insular*, and high cost areas" have access to reasonably comparable services at reasonably comparable rates (*italics added*). But the Commission has failed over time to give this phrase full meaning. We are long past due to address this aspect of the statute and incorporate this concept in our universal service support system. As we move forward and consider other universal service reforms, I hope that the Commission takes this statutory language into consideration.